

**Summary of the Meeting of the CON Task Force  
October 27, 2005**

**Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215**

**Task Force Members Present**

Commissioner Robert E. Nicolay, CPA, Chairman  
Commissioner Robert E. Moffit, Ph.D.  
Commissioner Larry Ginsburg  
Alan Bedrick, M.D.  
Albert L. Blumberg, M.D., F.A.C.R.  
Lynn Bonde  
Patricia M.C. Brown, Esquire  
William L. Chester, M.D.  
Annice Cody  
Hal Cohen, Ph.D.  
Adam Kane, Esquire  
Michelle Mahan  
Henry Meilman, M.D.  
Lawrence Pinkner, M.D.  
Barry F. Rosen, Esquire  
Joel Suldán, Esquire  
Jack Tranter, Esquire  
Elizabeth Weglein

**Task Force Members Absent**

Natalie Holland  
Carlessia A. Hussein, DrPH  
Anil K. Narang, D.O.  
Frank Pommert, Jr.  
Christine M. Stefanides, RN, CHE  
Douglas H. Wilson, Ph.D.

**Members of the Public Present**

Tyler Brannon, Johns Hopkins Health System  
Ing-Jye Cheng, MHA  
Sean Flanagan, St. Joseph Medical Center  
Anne Langley, Johns Hopkins Health System  
Vanessa Purnell, MedStar Health  
Laura Resh, Carroll Hospital Center

## **1. Call to Order**

Chairman Robert E. Nicolay called the meeting to order at 1:12 p.m. and welcomed Task Force members and the public.

## **2. Approval of the Previous Minutes (September 8, 2005)**

Chairman Nicolay noted that the Task Force members had received copies of the minutes of the September 22, 2005 meeting and asked for any comments, changes, or corrections. Task Force member Lawrence Pinkner made a motion to approve the minutes, which was seconded by Albert L. Blumberg, M.D., F.A.C.R., and unanimously approved by the members present.

## **3. Review of the Revised Draft of the Report of the CON Task Force**

- **State Health Plan**

Chairman Nicolay announced that the Task Force would consider and either affirm or amend the recommendations in the revised draft report. Following consideration and approval of the Task Force members, the report would be presented to the Commission for consideration at its November 22, 2005 meeting.

The first issue considered by the Task Force was the proposed review and update of the State Health Plan for Facilities and Services. Following discussion of the recommendation regarding ambulatory surgery, Task Force member Barry Rosen proposed that the Task Force's recommendation be revised to state as follows:

The revision of the Ambulatory Surgical Services chapter should consider ~~the implications of~~ better defining the exemption from CON regulation for establishment of single operating room ambulatory surgical facilities ~~as an exemption for a single room for the provision of invasive procedures within a practitioner's office, whether the room is a sterile operating room or a non-sterile "procedure room."~~ This will require consideration of definitions of the terms "operating room" and "procedure room", ~~and revised and expanded definitions of "full" and "optimal capacity" for different categories of surgical room.~~

Following further discussion, it was the consensus of the Task Force to adopt the revised language as proposed by Mr. Rosen.

Dr. Pinkner made a motion that the Task Force recommend to the Commission be that a study of the CON laws should be extended to include other outpatient services (e.g., birthing centers), which was seconded by Task Force member William L. Chester, M.D. Task Force members Bedrick, Bonde Chester, Pinkner, and Ginsburg voted in favor of the motion; Task Force members Blumberg, Brown, Cody, Cohen, Kane, Meilman, Moffit, Rosen, Tranter, Suldán, and Weglein voted in opposition to the motion; and Task Force member Mahan abstained. The motion failed.

Following discussion, Mr. Rosen made a motion that the Task Force recommendation regarding revision of the acute care chapter of the State Health Plan be revised as follows: The revision of the Acute Inpatient Services chapter of the State Health Plan should eliminate or substantially modify the following standards to the extent that they are obsolete and redundant, including: .06A(2) Utilization Review Control Programs; .06A(3) Travel Time; .06A(4) Information Regarding Charges; .06A(5) Charity Care Policy; .06A(6) Compliance with Quality Standards; .06A(7) Transfer and Referral Agreements; .06A(8) Outpatient Services; .06A(9) Interpreters; .06A(10) In-Service Education; .06A(11) Overnight Accommodations; .06A(12) Required Social Services; .06A(19) Minimum Size for Pediatric Unit; .06A(20) Admission to Non-Pediatric Beds; .06A(21) Required Services When Providing Critical Care; .06A(22) Average Length of Stay for Critical Care Units; .06A(23) Waiver of Standards for Proposals Responding to the Needs of AIDS Patients; .06B(1) Compliance with System Standards; .06B(2)(a) Duplication of Services and Adverse Impact; .06B(4) Burden of Proof Regarding Need; .06B(5) Discussion with Other Providers; .06B(9) Maximum Square Footage; .06C(2) Compliance with System Standards; .06C(3) Conditions for Approval; and, .06C(5) Maximum Square Footage-Renovations. Ms. Brown made a motion that the Task Force recommend that Staff move expeditiously to draft proposed regulations eliminating those standards that it agrees are obsolete or duplicative (as stated in Mr. Rosen's earlier motion) and that the remaining issues regarding revision of the SHP to be considered by a technical advisory group. This motion was seconded by Mr. Tranter, and unanimously approved by the Task Force.

Following discussion, Dr. Blumberg made a motion that the Task Force recommend that the Commission conduct a comprehensive review and update of the State Health Plan for Facilities and Services, including the final modifications approved, which was seconded by Dr. Pinkner, and unanimously approved.

Following discussion regarding the issue of shell space, Rex W. Cowdry, M.D., the Commission's Executive Director, suggested that the Task Force recommendation regarding shell space be revised as "Add policies to the Acute Inpatient Services chapter of the State Health Plan addressing shell space." Mr. Tranter made a motion that the Task Force adopt Dr. Cowdry's suggestion, which was seconded by Ms. Brown, and unanimously approved by the Task Force members present.

- **CON Review Process**

Ms. Cody noted concerns about recommending removal of standards from the State Health Plan review criteria, particularly standards for charity care, quality compliance, and the size of pediatric units, that had not been discussed by the Task Force members. Following discussion of the review criteria and development of a streamlined ("Fast Track") CON review process, Task Force member Patricia M.C. Brown, Esquire made a motion to approve the language in the final draft report, with the exception of the recommendation regarding home health services, which was seconded by Task Force member Jack Tranter, Esquire, and unanimously approved.

Dr. Blumberg made a motion that the Task Force recommendations to the Commission regarding the Certificate of Need Review Process be adopted, including the final modifications

approved, which was seconded by Task Force member Lynn Bonde, and unanimously approved by the Task Force members present.

- **Scope of Coverage**  
**-Home Health Services**

Chairman Nicolay said that the next agenda item for consideration would be the Task Force's recommendation regarding home health services. Following discussion, Mr. Suldán made a motion that the Task Force recommends that the Commission, effectively, issue a CON for home health applicants that agree to meet the Medicaid and the charity care requirements, but eliminate the capacity constraints by eliminating the need projection methodology for home health agencies in the State Health Plan, which was seconded by Mr. Kane. Following further discussion, Mr. Suldán withdrew his motion. Mr. Tranter made a motion that the Task Force recommend removal of home health agencies from the definition of "health care facility", which was seconded by Commissioner Robert Moffit. Task Force members Blumberg, Cohen, Kane, Moffit, Pinkner, Suldán, Tranter, and Chairman Nicolay voted in favor of the motion; Task Force members Bedrick, Bonde, Brown, Cody, Ginsburg, Mahan, and Meilman opposed the motion; and Task Force members Chester, Rosen, and Weglein abstained.

Additional discussion ensued and Mr. Rosen made a motion that if the Commission chooses not to move forward with deregulation of home health services, then Certificate of Need should be granted when the applicant agrees to meet the Medicaid, charity care requirements and all other standards. Mr. Rosen's motion was seconded by Dr. Chester. Task Force members Bedrick, Blumberg, Bonde, Brown, Chester, Cody, Cohen, Kane, Mahan, Moffit, Pinkner, Suldán, and Tranter voted in favor of the motion and Task Force members Ginsburg, Meilman, and Weglein abstained. There were no votes cast in opposition to the motion.

Commissioner Moffit made a motion that the Task Force recommend the deregulation of obstetrics services, which was seconded by Mr. Tranter. Following discussion, Task Force members Blumberg, Cohen, Kane, and Tranter voted in favor of the motion; Task Force members Bedrick, Bonde, Brown, Chester, Cody, Ginsburg, Mahan, Meilman, Pinkner, Rosen, and Suldán opposed the motion, and Task Force member Weglein abstained. The motion failed.

- **Scope of CON Coverage**

Chairman Nicolay announced that the next item for consideration would be the remaining recommendations regarding the scope of CON coverage. Discussion ensued and Mr. Rosen made a motion that the Task Force's recommendation be partitioned regarding the review process. One recommendation would be for the development of a streamlined review process. A separate recommendation would be that the Commission issue a Staff Report within sixty days and a Commission decision within ninety days or a project is deemed approved. Mr. Rosen's motion was seconded by Mr. Tranter. Task Force members Bedrick, Bonde, Blumberg, Brown, Chester, Cody, Ginsburg, Kane, Mahan, Meilman, Pinkner, Rosen, Suldán, Tranter, and Weglein voted in favor of the motion; Task Force members Cohen and Moffit opposed the motion, and there were no abstentions. The motion carried.

- **Principles to Guide the CON Program**

Chairman Nicolay announced that the next item for consideration would be the guiding principles. Dr. Blumberg made a motion to approve the guiding principles, which was seconded by Mr. Rosen. Ms. Bonde amended the motion to include the modifications proposed by Task Force member Carlessia A. Hussein, DrPH, which was acceptable to Dr. Blumberg. The motion was unanimously approved by the Task Force.

- **Next Steps**

Chairman Nicolay said that the final draft report would be sent to the Task Force members for their approval in early November, followed by presentation to the Commission at its next meeting on November 22, 2005, and a public comment period. The Commission will consider the report for final action at its December 15, 2005 meeting and develop an implementation plan thereafter.

#### **4. Other Business**

Chairman Nicolay thanked the members of the Task Force for their input and asked if there was other business for consideration. Dr. Cohen stated that the Commission members should note the composition of the Task Force membership as it considers the recommendations in the final report.

Chairman Nicolay emphasized that it had been a pleasure to have worked with the distinguished members of the Task Force, thanked the Commission staff for its outstanding work, and invited the Task Force members and members of the public to the next meeting of the Commission on November 22, 2005.

#### **5. Adjournment**

There being no further business, the meeting was adjourned upon a motion by Mr. Tranter, and seconded by Mr. Rosen, at 3:34 p.m.